

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARTHUR SOBEY,)	
)	
Petitioner,)	4:04cv3342
)	
vs.)	MEMORANDUM AND ORDER
)	(appeal)
FRED BRITTEN,)	
)	
Respondent.)	

This matter is before the court on filing no. 35, the Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal filed by the petitioner, Arthur Sobey; and filing no. 37, the respondent's Objection to the petitioner's Application for Leave to Proceed IFP. The petitioner acknowledges on his IFP application that he receives a military pension. On the basis of that pension, the respondent objects to the petitioner's Application to Proceed IFP. The petitioner has paid his district and appellate filing fees, but he seeks appointment of counsel on appeal, and he is concerned that his pension will not stretch that far.

The petitioner's prisoner account statement (filing no. 36) indicates that the pension benefits are not deposited directly into his inmate trust account. Instead, a person named Janet Sobey sends the petitioner a small percentage of the monthly pension benefit for deposit into the petitioner's inmate trust account. Apparently, the rest of the pension is used for the support of others. At any rate, even if the entire \$1,250 benefit were payable directly to the petitioner, which it does not appear to be, the cost of an attorney is likely to exceed that amount.

This case is presently on appeal, and the petitioner's IFP motion may at this point have to be addressed to the Eighth Circuit Court of Appeals. Nevertheless, assuming that

I do retain jurisdiction to rule on the motion, I grant filing no. 35, and I deny filing no. 37. The petitioner must address any motion for appointment of counsel directly to the Eighth Circuit. The Clerk of Court shall immediately forward this Order to the parties and to the Eighth Circuit Court of Appeals.

SO ORDERED.

May 7, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge